IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5077 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL JIGNESHKUMAR KARSANBHAI

Versus

STATE OF GUJARAT

Appearance:

MR PS PATEL for Petitioner Nos. 1-21

Mr.M.K. Dagli, Assistant Government Pleader,

for Respondent No. 1-5,8-10

MR MP PRAJAPATI for Respondent No. 6

MR PK JANI for Respondent No. 7

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 09/05/2003

ORAL JUDGEMENT

By filing this petition, it is prayed by the

petitioners that the District Education Committees of Surendranagar, Anand, Kheda, and Mehsana be directed to consider the applications of the petitioners for the purpose of employment as Vidhya Sahayak (Art Teacher Diploma) and that their applications should not be rejected on the ground that the Institution, from which they have obtained such Diploma, has not been recognized by National Council for Teacher Education, Bhopal ("NCTE", for short). Mr.Jani, learned Advocate, who is appearing for respondent No.7, submitted that it is not in dispute that the Institution, through which the petitioners have passed the Course, has already applied for recognition. In fact, this fact is confirmed by all parties, including Mr.Pandya, who is appearing for the newly added respondents.

On behalf of the petitioners, reference is made to the decision of this Court in Special Civil Application No.7405 of 2002 and other group of matters, decided on 27th November, 2002. In the aforesaid group of matters, a learned single Judge of this Court (Coram : R.M. Doshit, J.) has observed as under :-

> " ... ...
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> In the present case, it is not disputed that except the above four institutions, none of the institutions where petitioners have received education in Art Teacher's Diploma had applied for recognition by the Council within six months from the appointed day, as envisaged under proviso to sub-section (1) of Section 14 of the Act. It is admitted that the applications for recognition made by the above four institutions are still pending consideration by the Regional Committee of the Council and are not yet disposed of. Hence, the said four institutions are entitled to continue to offer the course in Art Teacher's Diploma though they have yet not been recognised by the Council. Such of the petitioners who have obtained qualification by pursuing the course offered by the said four institutions shall be held to be qualified for appointment under the concerned District Primary Education Committee. The rest of the petitioners who have obtained qualification by pursuing the course offered by the Institutions which did not apply for

recognition by the Council within six months from the appointed day, as envisaged under section 14 (1) of the Act shall not be considered to be qualified for appointment under the concerned District Primary Education Committee.

Both the learned advocates, Mrs. Mehta & Mr.Patel have submitted that admission to the Art Teacher's college in the State of Gujarat is made by the State of Gujarat through a common admission procedure. The petitioners had been granted admission to the concerned institutions through such common admission procedure on recommendation made by the State Government. After successfully pursuing the course, the Diploma is conferred by the State Examination Board. Hence, the respondent-District Education Committees should be estopped from holding that the qualification obtained by the petitioners is not a valid qualification for appointment under the District Primary Education Committees. It appears that all the institutions in which the petitioners took training in Art Teacher's Diploma are recognised by the State of Gujarat and the admission to the said institutions are made through the common admission procedure. However, it is a statutory requirement that all such institutions shall be recognised by the National Council for Teacher Education. Unless they are so recognized, the qualification obtained by pursuing the course offered by them cannot be held to be a valid qualification, as discussed hereinabove. It is well settled law that there cannot be estoppel against the Statute. Hence, the contention requires to be rejected.

It is admitted that all the petitioners, except the petitioners nos. 8, 25 and 30 in Special Civil Application No.7405 of 2002, have acquired the qualification of Art Teacher's Diploma by pursuing such course offered by one of the aforesaid four institutions. It is, therefore, held that all the petitioners except petitioners nos. 8, 25 & 30 in

Special Civil Application No.7405 of 2002 possess a valid qualification in Art Teacher's Diploma and are entitled to be considered for appointment under the concerned District Primary Education Committee. The qualification obtained by the petitioners nos. 8, 25 & 30 in Special Civil Application No.7405 of 2002 is not a valid qualification and the said petitioners are not entitled to be considered for appointment under the concerned District Primary Education Committee.

It is also admitted that both the petitioners in Special Civil Application No.7756 of 2002 have acquired Art Teacher's Diploma by pursuing the course offered by one of the above referred four institutions. Hence, it is held that both these petitioners hold a valid qualification in Art Teacher's Diploma and are entitled to be considered for appointment under the concerned District Primary Education Committee.

In Special Civil Application No.10946 of 2002, it is admitted that petitioners nos. 1 and 3 have received training in Art Teacher's Diploma in one of the above-referred four institutions. The institutions where the petitioner No.2 has received training had not applied for recognition within six months as envisaged under section 14(1) of the Act. In that view of the matter, the petitioners Nos. 1 & 3 can be said to have valid qualification for appointment under the concerned District Primary Education Committee. It is, therefore, declared that the petitioners nos. 1 and 3 are eligible for being considered for appointment under the concerned District Primary Education Committee. The petitioner no.2 does not possess a valid qualification and is not entitled for being considered for appointment under any District Education Committee.

All these three petitions are disposed of in the above terms. Notice

issued in each of the petitions is discharged. There shall be no order as to costs. Registry shall maintain copy of this order in each of these petitions.

... ..."

Mr.Pandya, learned Advocate who appears on behalf of the newly added respondents, submitted that his clients were the original petitioners before this Court in the petition in which this Court has delivered the judgment, referred to above, i.e. Spl.C.A.No.7405 of 2002. He submitted that the benefit of that judgment would be available only to his clients, i.e. the newly added respondents, because, it is not a judgment in rem and that the benefit was made available to the petitioners of that case. However, it is not possible to agree with the submission of Mr.Pandya, because, this Court has taken the view that the institution, through which the petitioners have completed the course, is an institution which has also applied for recognition to NCTE and hence, such petitioners are eligible for consideration for appointment. In this situation, no exception can be made out, as suggested by Mr.Pandya. However, Mr.Pandya also conceded the fact that the petitioners of this petition are eligible for consideration for appointment, but, according to him, they should wait for the next turn, as, the present vacant posts must be given to the present newly added respondents, and the present petitioners can apply in future for getting appointment, as, according to him, vested right is created in favour of the present newly added respondents. It is, however, required to be noted that this Court is not required to examine this question, as, it is left to the discretion and wisdom of the State Government at the time of giving appointment orders. However, Mr.Pandya, learned Advocate for the newly added respondents, submitted that he reserves his right to take appropriate proceedings before the State Government, asserting the rights of the newly added respondents, on the ground that they have got a vested right for appointment to the post in question. However, in this petition, this Court is not required to resolve the dispute between the newly added respondents and the State Government. If the newly added respondents have got any grievance against the State Government in any manner, it is open for the said respondents to take recourse to appropriate remedy in accordance with law. This petition is confined only qua the question, which is raised by the petitioners, viz., that the petitioners have passed their

course through the Institution which has already validly applied for recognition to NCTE, and that, they are eligible for appointment. In this matter, the Court is not examining the inter se dispute between the petitioners and the newly added respondents. As a matter of fact, there is nothing on the record to suggest that a dispute exists between the petitioners and the newly added respondents, or between the petitioners and the State Government. If any such eventuality happens, it is open for the newly added respondents to take appropriate proceedings, and I have not expressed any opinion, and it is also requested by Mr.Pandya that this Court may not express any opinion. Suffice it to say that it is admitted by all the learned Advocates, including Mr.Pandya, that the petitioners have passed the said course from the Institutions, which have already applied to NCTE for recognition and Mr.Pandya has also conceded that the present petitioners would be otherwise eligible when his submission is limited that their cases can be considered for future appointments, as, according to him, some vested right is created in favour of the newly added respondents. In this petition, this Court has not examined this question, as, it is for the State Government to examine the same.

The issue involved in the present petition is whether the present petitioners are entitled to be considered for appointment to the said post in view of the judgment of this Court in Special Civil Application No.7405 of 2002 and the group matters.

Mr.Dagli, learned AGP, who is appearing for the respondent-State Government, submitted that the case of the present petitioners is squarely covered by the decision of this Court, referred to hereinabove.

Considering the facts and circumstances of the case, the petition is partly allowed. So far as the petitioners are concerned, they are held to be eligible for being considered for appointment under the concerned District Primary Education Committee. Rule is accordingly made absolute.

(P.B. Majmudar, J.)

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(apj)